

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**PENNY SCHROCK, APPOINTING
AUTHORITY DEPARTMENT OF
SOCIAL SERVICES, DIVISION OF
FINANCE AND ADMINISTRATIVE SERVICES**

RESPONDENT,

**v.
XINSHENG (RANDY) GAN**

APPELLANT.

DOCKET NUMBER WD78835

DATE: July 26, 2016

Appeal From:

Cole County Circuit Court
The Honorable Jon E. Beetem, Judge

Appellate Judges:

Special Division: Mark D. Pfeiffer, Chief Judge, Presiding, Gary D. Witt, Judge and Anthony
Rex Gabbert, Judge

Attorneys:

D. Ryan Taylor, Kansas City, MO, for respondent.

George S. Smith and Andrew G. Heitmann, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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RESPONDENT,

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No. WD78835

Cole County

Before Special Division: Mark D. Pfeiffer, Chief Judge, Presiding, Gary D. Witt, Judge and Anthony Rex Gabbert, Judge

Appellant Xinsheng (Randy) Gan ("Employee") appeals from the judgment of the Circuit Court of Cole County, which reviewed a decision by the Administrative Hearing Commission ("Commission") that had determined that the termination of Employee's employment with the Missouri Department of Social Services ("Department") was wrongful. Respondent Penny Schrock ("Employer"), representing the Department, had sought review of the Commission's decision by the circuit court. The circuit court found that the Commission had used the wrong legal standard in determining whether Employee's dismissal was for "racial reasons" and remanded the case back to the Commission. Employee seeks to appeal the circuit court's judgment, prior to the remand back to the Commission, and seeks affirmance of the Commission's decision.

DISMISSED

Special Division holds:

(1) Because the cause was remanded back to the Commission for further proceedings and factual findings and the merits of the case were not considered by the circuit court, the judgment is not final and not appealable to this Court. This Court does not have jurisdiction and is required by law to transfer the case to the entity that does have jurisdiction.

(2) Because we do not have jurisdiction to decide the appeal, we do not decide whether the circuit court erred in determining that the Commission only had jurisdiction to determine whether Employee's race was the sole cause of his termination.

(3) Employee's Motion for Attorney's Fees and Costs is denied without prejudice.

This summary is UNOFFICIAL and should not be quoted or cited.
